

COMMONWEALTH OF VIRGINIA

Department of Environmental Quality

Water Division

Subject: GUIDANCE MEMORANDUM No. 03-2001
Reporting Operator Misconduct or Convictions

To: Regional Directors

From: Larry G. Lawson, P.E., Director



Date: January 7, 2003

Copies: Harold Winer, John Bowden, James Golden, David Miles, Larry Simmons, Norm Aldridge, Bob Goode, Tom Faha, Kip Foster, Keith Fowler, Curt Linderman, Allen Newman, James McConathy, Renee Hooper, Kathleen O'Connel, Ralph Mayer, Jack Vanderland, Wayne Staples

Summary:

The purpose of this guidance is to establish a procedure to ensure that when DEQ personnel identify actions by licensed wastewater treatment operators that may be in violation of the State Board for Waterworks and Wastewater Works Operators (Board) regulations Standards of Practice (18 VAC 160-20-140) this information is transmitted to the Department of Professional and Occupational Regulation (DPOR) in a timely manner. Failure to provide this information may allow operators whose actions endanger public health, cause environmental damage or violate state and federal law to retain their license and continue working in the profession.

This procedure applies only to actions identified by DEQ staff. Operators, operating staff and private citizens wishing to report violations should contact the Department of Professional and Occupational Regulation, Enforcement Division (804 367-8504).

Electronic Copy:

These electronic copies are in PDF format and may be read online, downloaded, distributed to the staff or the public. The numbering convention is: GM, then a two digit number designating the year of preparation, followed by a hyphen and the document number.

Contact information:

Please contact Jack Vanderland. Office of Operator Training, 804 698 4092, or jwvanderla@deq.state.va if you have any questions about this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the agency. However, it does not mandate any particular procedure nor does it prohibit any alternative procedure from being followed. If alternative procedures are observed, such procedures should be reviewed and accepted or denied based on their technical adequacy and compliance with appropriate laws and regulations.

Procedure

When DEQ personnel becomes aware of a possible violation of Part V, Standards of Practice (18 VAC 160-20-140) of the Board for Waterworks and Wastewater Works Operator Regulations (Attachment A) they should notify Wayne Staples, Office of Operator Training in writing or by email (dwstaples@deq.state.va.us). Notification should identify DEQ staff that Department of Professional and Occupational Regulation (DPOR) investigators may contact for additional information, the names and license number(s) of operator(s) involved, a description of the actions thought to be in violation (including date(s), location(s), impact on public health and/or the environment and any other pertinent information). If DEQ has taken any legal action against the operator, the charge(s), court of record, and disposition should also be provided.

Wayne will then forward the information to the Department of Professional and Occupational Regulation, Enforcement Division and the State Board for Waterworks and Wastewater Works Operators administrator.

To avoid conflict of interest information regarding cases that may come before the license Board for resolution, the following individuals should not be contacted or copied regarding any potential DPOR referral:

Larry G. Lawson, Director, Water Division (Board member)

Jack Vanderland, Program Manager, Office of Operator Training (Board consultant)

Discussion

In 1972, Virginia passed legislation to require mandatory certification (licensing) for water and wastewater treatment plant operators. The law established a seven member Board with broad powers to regulate these professions. The Board has authority to fine licensed operators, suspend or revoke licenses and deny applications for licensure. The Standards of Practice (See Attachment A) of the Board's regulations (18 VAC 160-20-10 et. seq.) define those actions that will result in disciplinary action. *It is important to recognize that once a license is issued it remains valid until (a) the Board suspends or revokes it (b) the licensee voluntarily gives up the license, or (c) the license expires and is not renewed within the allotted time.* Being convicted of a criminal activity in the performance of his duties does not result in automatic revocation of the license.

The seven member Board consists of representatives of waterworks and wastewater works operators (1 each); waterworks and wastewater works owners (1 each), a faculty member from the civil or sanitary engineering program of a state university, the Director of the Office of Water Programs of the State Department of Health (water) and the Director of the Water Division of the Department of Environmental Quality. The Department of Professional and Occupational Regulation (DPOR) serves as the administrative agency for the Board. Since DPOR does not inspect water and wastewater facilities, does not have access to inspection information generated by SDH and DEQ and does not receive notification when a licensee is found guilty of a crime, it must rely on SDH and DEQ to provide information on alleged infractions. A number of cases have come before the Board as a result of information provided by DEQ staff but there is a need to establish a clearly defined procedure to ensure all incidents are reported in a timely manner.

Attachment A
Licensed Operator Standards of Conduct
Excerpted from Board for Waterworks and Wastewater Works Operators Regulations
(18 VAC 160-20-10 et seq.)
Effective February 15, 2002

18 VAC 160-20-140 Discipline

The board has the power to discipline and fine any licensee and to suspend or revoke or refuse to renew or reinstate any license as well as the power to deny any application for license under provisions of Chapter 23 (§54.1-2300 et seq.) of Title 54.1 of the Code of Virginia and this chapter for any of the following reasons:

1. *Obtaining or renewing a license through fraudulent means or misrepresentation.*
2. *Having been convicted or found guilty by a court in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing or for any activities carried out while engaged in waterworks or wastewater works activities there being no appeal pending therefrom or the time for appeal having lapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subsection. A certified copy of a final order, decree or case decision by a court or regulatory agency with lawful authority to issue such order, decree or case decision shall be prima facie of such conviction or discipline. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.*
3. *Not demonstrating reasonable care, judgement or application of the required knowledge, skill, and ability in the performance of the operating duties;*
4. *Violating or inducing another to violate any provisions of Chapter 1, 2, 3, or 23 of Title 54.1 of the Code of Virginia or any provision of this chapter;*
5. *Having been found guilty by the board, an administrative body or by a court of any activity in the course of performing his operating duties that resulted in the harm or the threat of harm to human health or the environment.*
6. *Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony which resulted in the harm or threat of harm to human health or the environment. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of any misdemeanor for activities carried out while engaged in the waterworks or wastewater works activities or involving lying, cheating or stealing;
or*
7. *Negligence or a continued pattern or incompetence, in the practice as a waterworks or wastewater works operator.*